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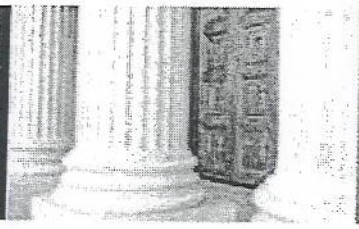

The Voice™

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## This Week's Feature

**It's Not What You Say, But How You Say It — Tools For Successful Trial Presentation**
**By Timothy J. Gardner**

When I was a child, my mother often said to me "It's not what you said, but how you said it." This statement typically followed my reasonable explanation for something I said to one of my siblings that on its face was innocent, but could be misconstrued through delivery. Successful trial attorneys master presenting evidence to ensure that their message is delivered effectively and as intended. Trial czars are deliberate in the order in which trial evidence is presented and how to present evidence, so that the appropriate response is received from the jury. Although I am not a trial czar yet, this article highlights some practices that I have learned and developed to present at trial successfully.

Preparation for trial begins when you first get the case. As a new associate, I thought that the partner for whom I worked was being dramatic when he first told me this. The reality is that one must develop a theme, strategy and plan when the case is assigned. These strategies and themes are not set in stone and may be modified as the case develops, but planning is necessary throughout the litigation process. It is important to visualize how the case will be presented, what evidence you will need at trial, how you will gather the evidence, how the evidence will be admitted, and how evidence will be excluded. I have seen some good cases become average because the attorney did not plan how to obtain good evidence and/or plan how to get the evidence admitted at trial. This planning must start from day one.

Case files must be organized and have a purpose. Trials have too many complications, surprises and fireworks to allow an unorganized file to add to the excitement. Disorganization is ineffective and will be exposed at trial. Disorganized attorneys are not being honest when they say "I know where everything is - it's organized in my mind." Organization must be apparent to all. Throughout litigation and the trial, there are several people who may come in contact with a case file and it is important that a system is in place to make sure that documents and evidence are preserved and easily obtainable. Also, during trial the judge may ask for a particular document on a moment's notice, and it will be necessary for the attorney to find the document quickly. If he/she is unable to locate it, not only will the judge be perturbed, but the jury will also notice the attorney's

lack of preparation.

Trial presentations should be informative, logical and well planned. Effective trial attorneys understand that evidence must be presented in a way that someone actually wants to hear it. Witness testimony should be presented in a clear and precise manner with a purpose. Every witness called should offer value to the case and that witness' order should have been predetermined for some reason that assists in trial presentation. The witness is there to educate the jury on the circumstances surrounding the case. In a good trial, the jurors leave feeling that they have developed somewhat of an expertise in the subjects at issue. Not all jurors are waiting a lifetime to be called to jury duty. A good trial attorney does not waste jurors' time.

Demonstrative evidence must also be planned well before the actual trial of the case. An effective trial attorney considers what evidence will paint the picture for the jury and drive the point home. Evidence is presented effectively sometimes through a simple blow-up of a photograph and other times through animation. Regardless, both of these presentation methods require advance planning and likely the assistance of an outside source that may not be available on the eve on trial. Despite our egos, attorneys may also need to practice with the demonstrative evidence to make sure that they know how to use it so that the intended purpose of the evidence is not lost through the attorney's fumbling. Trial presentations that are polished and presented well are usually memorable for the right reasons.

Trial attorneys should attempt to understand every aspect of their case. An attorney who does not fully understand his/her case is at a disadvantage. The attorney will not only lack the confidence necessary for an effective trial presentation, the attorney risks being surprised by opposing counsel at trial. It is best to strive to know more about the case than anyone else. It is also wise to try to understand your opponent's case so that you can effectively challenge it. It is good practice to visualize the entire case before you present your case and be prepared for potential pitfalls well before they surface.

Throughout the trial, the attorney should always respect the court and the trial process. Jurors make a sacrifice so that our judicial system can work. Some trials require jurors to be away from work, family, friends and many other things for extended periods of time. Be mindful that jurors have better stuff to do. It is disrespectful to be cavalier to the court or the trial process regardless of how one feels about the current circumstances of the trial. Maintain professionalism at all costs and be civil to all with whom you come in contact. Jurors will appreciate your professionalism, and you will likely earn favor with the jurors as well.

The above practices are just a few that I have implemented in preparing and presenting for trial. Following these practices will not guarantee a win at every trial, but will make the case a lot easier to try and allow the attorney to walk away proudly, regardless of the outcome. The message delivered at trial will

have its intended effect and, at the end of the day, the jurors should understand what you have said and appreciate how you said it.

**Timothy J. Gardner**

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